



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211117-0235; RTID 0648-XX072]

Fisheries of the Northeastern United States; 2022 and 2023 Summer Flounder, Scup, and Black Sea Bass Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2022-2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels for these species that will prevent overfishing, consistent with the most recent scientific information.

DATES: Comments must be received on or before *[insert date 15 calendar days after the date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0120, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0120 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by

NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A Supplemental Information Report (SIR) was prepared for the 2022-2023 summer flounder, scup, and black sea bass specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the Internet at https://www.mafmc.org/s/SFSBSB_2022-2023_specs_SIR_final.pdf.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281-9116.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. This action proposes 2022 and 2023 ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea

Bass Board (Board) and Council at their joint August 2021 meeting.

The Scientific and Statistical Committee (SSC) met on July 22, 2021, to review the results of the 2021 management track stock assessments and recommend 2022 and 2023 ABCs for all three species; specific recommendations are discussed below.

Proposed 2021 Specifications

Summer Flounder Specifications

The Council and Board recommended 2022-2023 summer flounder catch and landings limits are shown in Table 1. The recommendations are based on the averaged 2022-2023 ABCs recommended by the SSC. This approach allows for constant catch and landings limits across both years. The ABCs are based on an SSC-modified overfishing limit (OFL) and the Council's risk policy, resulting in a 44- to 46-percent probability of overfishing. For summer flounder, this results in a 22-percent increase in the recommended 2022 and 2023 ABC over the 2021 ABC. The proposed 2022-2023 commercial quota represents a 24-percent increase over the 2021 quota, and approximately a 35-percent increase over 2020 reported landings. The proposed 2022-2023 RHL is a 25-percent increase over the 2021 RHL.

Table 1 -- Summary of 2022 and 2023 Summer Flounder Fishery Specifications

Specifications	Mil lb.	Metric Ton
OFL	2022: 36.28 2023: 34.98	2022: 16,458 2023: 15,865
ABC	33.12	15,021
Commercial ACL = ACT	18.48	8,382
Commercial Quota	15.53	7,046
Recreational ACL = ACT	14.64	6,639
Recreational Harvest Limit	10.36	4,697

The initial 2022 state-by-state summer flounder quotas are provided in Table 2. Through the final rule for this action, prior to the start of the fishing year, we will announce any adjustments necessary to address any long-standing overages or potential 2021 overages to provide the states with their final quotas.

Table 2 -- Initial 2022 Summer Flounder State-by-State Quotas

State	Initial 2022 Quotas* (lb)	Initial 2022 Quotas* (mt)
ME	24,488	11.11
NH	19,990	9.07
MA	1,391,846	631.33
RI	2,238,216	1,015.24
CT	956,043	433.65
NY	1,470,779	667.13
NJ	2,337,728	1,060.37
DE	21,645	9.82
MD	935,226	424.21
VA	2,776,242	1,259.28
NC	3,361,569	1,524.78
Total	15,533,771	7,045.99

*Initial quotas do not account for any previous overages.

This action makes no changes to the current commercial management measures, including the minimum fish size (14 inch (36 cm) total length), gear requirements, and possession limits. Changes to 2022 recreational management measures (bag limits, size limits, and seasons) are not considered in this action, but will be considered by the Board and Council later this year when additional data are available for 2021.

Black Sea Bass Specifications

The Council and Board recommended 2022-2023 black sea bass catch and landings limits are shown in Table 3. After reviewing the 2021 black sea bass management track stock assessment, the SSC recommended 2022-2023 ABCs based on a 100-percent OFL coefficient of variation (CV) and the Council's risk policy for a stock above 1.5 times SSB_{MSY} , with an associated 49-percent probability of overfishing, aligning with their recommendations for this species from previous years. To ensure that the probability of overfishing remained below 50 percent in each year, the SSC recommends annually varying ABCs for 2022 and 2023. They could not recommend a constant ABC across the two years based on the average of the varying ABCs as this would have resulted in a greater than 50-percent probability of overfishing in 2023. This

results in a 2022 black sea bass ABC that is an 8-percent increase compared to 2021, and a 2023 ABC that is a 5-percent decrease compared to 2021. The proposed 2022 commercial quota and RHL are both 6 percent higher than the 2021 quota and RHL.

Table 3 – 2022 – 2023 Black Sea Bass Catch and Landings Limits

Specifications	2022		2023	
	Mil lb.	Metric Ton	Mil lb.	Metric Ton
OFL	19.26	8,735	17.01	7,716
ABC	18.86	8,555	16.66	7,557
Expected Commercial Discards	3.63	1,649	3.21	1,456
Expected Recreational Discards	2.02	917	1.79	810
Commercial ACL = ACT	10.10	4,583	8.93	4,048
Commercial Quota	6.47	2,934	5.71	2,592
Recreational ACL = ACT	8.76	3,972	7.74	3,509
RHL	6.74	3,055	5.95	2,699

This action proposes no changes to the 2022 commercial management measures for black sea bass, including the commercial minimum fish size (11 inch (27.94 cm) total length) and gear requirements

Scup Specifications

The Council and Board recommended 2022-2023 scup catch and landings limits are shown in Table 4. The SSC recommended 2022-2023 ABCs based on a 60-percent OFL CV (as they have used for this species in previous years) and the Council's risk policy for a stock above 1.5 times SSB_{MSY} , with an associated 49-percent probability of overfishing. Similar to black sea bass, to ensure that the probability of overfishing remained below 50 percent in each year, the SSC recommend annually varying ABCs for 2022 and 2023. This results in a proposed 2022 ABC that is 8 percent less than the 2021 ABC; the proposed 2023 ABC is 15 percent less than the 2021 ABC. The proposed scup commercial quotas for 2022 and 2023 represent a less than 1-percent decrease and a 13-percent decrease respectively from 2021. However, scup quotas have not been

constraining since 2007 and recent landings are less than the proposed quotas. The proposed 2022 RHL is less than 1 percent greater than the 2021 RHL.

Table 4 -- 2022-2023 Scup Catch and Landings Limits

Specifications	2022		2023	
	Mil lb.	Metric Ton	Mil lb.	Metric Ton
OFL	32.56	14,770	30.09	13,648
ABC	32.11	14,566	29.67	13,460
Expected Commercial Discards	4.67	2,117	5.28	2,394
Expected Recreational Discards	0.99	447	1.12	506
Commercial ACL = ACT	25.05	11,361	23.15	10,499
Commercial Quota	20.38	9,245	17.87	8,105
Recreational ACL = ACT	7.06	3,205	6.53	2,961
RHL	6.08	2,757	5.41	2,455

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 5.

Table 5 -- Commercial Scup Quota Allocations for 2020 by Quota Period

Quota Period	Percent Share	lb	mt
Winter I	45.11	9,194,201	4,170
Summer	38.95	7,938,686	3,601
Winter II	15.94	3,248,849	1,474
Total	100.0	20,381,736	9,245

The current quota period possession limits are not changed by this action, and are outlined in Table 6.

Table 6 -- Commercial Scup Possession Limits by Quota Period

Quota Period	Percent Share	Federal Possession Limits (Per Trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the

remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

Table 7 -- Potential Increase in Winter II Possession Limits based on the Amount of Unused Scup Rolled over from Winter I to Winter II

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

This action proposes no changes to the 2022 commercial management measures for scup, including the minimum fish size (9 inch (22.9 cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2022 will be considered later this year when additional data are available for 2021.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-

Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Mid-Atlantic Fishery Management Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would set the 2022 and projected 2023 catch and landings limits for summer flounder, scup, and black sea bass based on the recommendations of the SSC, the Council, and Board. The proposed 2022-2023 specifications are an increase for summer flounder in both years and black sea bass in 2022, compared to the 2021 quotas. The 2022-2023 scup specification are lower than 2021, but commercial scup landings appear to be influenced by market conditions, and landings have been lower than the quota since 2007. No changes to the Federal commercial fishery management measures are being proposed. Recreational fishery management measures are developed in a separate action.

Vessel ownership data were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action. Affiliates were identified as primarily commercial fishing affiliates if the majority of their revenues in 2020 came from commercial fishing. Some of these affiliates may have also held party/charter permits. Affiliates were identified as primarily for-hire fishing affiliates if the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also held commercial permits.

Based on this grouping, a total of 711 commercial affiliates reported revenue from summer flounder, scup, and/or black sea bass landings in at least one year during 2018-2020. Based on combined receipts in 2020, 706 (99 percent) of these commercial affiliates were classified as small businesses and 5 (1 percent) were classified as large businesses.

A total of 361 affiliates reported that the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 361 of the for-hire affiliates were categorized as small businesses based on their 2020 revenues. It is not possible to determine the proportion of their revenues that came from fishing for an individual species. However, given the popularity of summer flounder, scup, and black sea bass as recreational species in the Mid-Atlantic and southern New England, revenues generated from these species are likely important for many of these firms at certain times of the year.

The 706 potentially impacted commercial fishing small business affiliates had average total annual revenues of \$634,503, and an average of \$52,227 in annual revenues from commercial landings of summer flounder, scup and/or black sea bass during 2018-2020. On average, these species accounted for 8 percent of the total revenues for these 706 small business affiliates.

The five potentially impacted large business affiliates had average total annual revenues of \$82.8 million and \$438,853 on average in annual revenues from commercial landings of summer flounder, scup, and/or black sea bass during 2018-2020. On average, these species accounted for less than 1 percent of the total revenues for these five large business affiliates.

The proposed action for summer flounder is expected to result in a slight to moderate increase in commercial landings compared to current levels. The proposed 2022-2023 commercial quota represents a 24-percent increase over the 2021 quota, and

approximately a 35-percent increase over 2020 reported landings.

The proposed action for scup is expected to result in similar levels of commercial landings and revenues as the past several years. Commercial scup landings appear to be influenced more by market factors than the annual commercial quota. The proposed scup quotas for 2022 (20.38 million lb, 9,244 metric tons) and 2023 (17.87 million lb, 8,105 metric tons) represent a less than 1-percent decrease and a 13-percent decrease from 2021 (20.50 million lb, 9,298 metric tons), respectively. However commercial landings have been lower than the quotas since 2007, and recent landings are lower than the proposed 2022 and 2023 quotas. In general, the proposed 2022-2023 scup quotas are expected to have moderate positive impacts for both the small and large commercial fishing business identified above because they are expected to result in revenues similar to those over the past several years

The proposed action for black sea bass is expected to have generally moderate positive socioeconomic impacts for all participants because it would allow for commercial landings and revenues that are similar to recent years. For example, the proposed 2022 quota (6.47 million lb, 2,934 metric tons) is 6 percent higher than the 2021 quota (6.09 million lb, 2,762 metric tons) and the proposed 2023 quota is 6 percent lower than the 2021 quota.

This action does not consider changes to recreational management measures.

As result, this action is not expected to adversely impact revenues for commercial and recreational vessels that fish for summer flounder, scup, and, black sea bass. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 17, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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